

2010

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The Office of Professional Responsibility

*Standard Bearer for Integrity
in Tax Practice*



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Circular 230

“Beyond the Basics”

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The Statute

31 U.S.C. § 330 (1884)

Regulates the practice of
representatives of persons before
the Department of the Treasury;



“Ticket” to Practice

Good character

Good reputation

Necessary qualifications to enable the representative to provide persons with valuable service

Competency to advise and assist persons in presenting their cases



The Regulations

31 C.F.R. Part 10 (1886)

Treasury Circular No. 230 (pamphlet)-

Four Subparts:

- Authority to Practice
- Duties and Restrictions Relating to Practice
- Sanctions for Violations
- Disciplinary Procedures

“Practice” - 2010

All matters connected with a presentation to the IRS relating to a taxpayer’s rights, privileges, or liabilities under laws or regulations administered by the IRS

Preparing or filing documents, corresponding and communicating with the IRS, rendering written advice, and representing a client at conferences, hearings and meetings

Legacy Cir 230 Practitioners: Practice = Standards for Tax Return Preparation

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2011 Revisions

Distinguish PTIN vs. Circular 230

Distinguish Preparation vs. Practice

Division of Labor – OPR vs. RPO

OPR

- Practice Standards Oversight
- Independent Investigations
- Propose & Negotiate Discipline
- Administrative Hearings & Appeals

Key Cir. 230 Provisions

Diligence as to Accuracy

Due Diligence Standards for Returns and
Other Docs

Conflicts of Interest



Diligence as to Accuracy (10.22)

Must exercise Due Diligence in:

- Preparing, approving and filing tax returns, documents, affidavits etc. relating to IRS matters
- Determining correctness of oral/written representations made to the client or to Treasury personnel.

Is Reliance on Another's Work Product
OK?

- Only With Reasonable Care.

Due Diligence Standards for Tax Returns (New) 10.34(a)

May not sign a tax return or advise a position on a tax return, if it:

- Lacks a reasonable basis
- Is an unreasonable position (6694(a)(2))
- Is a willful attempt to understate liability
- Is a reckless, intentional disregard of rules and regulations

Patterns matter

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Standards for Documents and Other Papers- 10.34(b)

May not advise taking positions that are frivolous.

May not advise submissions:

- To delay or impede tax administration
- That are frivolous
- Containing or omitting information that demonstrates an intentional disregard of rules or regulations.

Penalties and Client Reliance- 10.34(c), (d)

Must advise client of potential penalties and their avoidance through disclosure

Reliance on client information in good faith, without verification, is OK, but...

- Cannot ignore implications of other information furnished
- Cannot ignore actual knowledge
- Must make reasonable inquiries for incorrect, inconsistent information

No willful blindness.

No “Don’t ask, don’t tell”

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Conflicting Interests- 10.29

One client interest directly adverse to another
Significant risk of material limitation

– By Responsibilities to

Another client,

Former client,

Third person

**OR, by the PERSONAL INTERESTS OF
THE PRACTITIONER**

Conflicts (cont.)

May represent if:

- YOU have a reasonable belief that you can provide competent, diligent representation to each affected client
- Not legally prohibited
- EACH affected client waives conflict by giving INFORMED consent – in writing- at the time conflict is known

Hypothetical

Clients H & W

You communicate only with H who is a psychiatrist

Professional S-Corp

W - second wife with new-born son,
occasionally helps in office for no pay

Office in home – separate wing-spacious

Vacation home- Vancouver, BC

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Hypo (cont)

You prepare the return for the S-corp and the joint personal tax return

Bookkeeper – 3 days/wk; deposits, vendor payments, bank recs, QuickBks

You – techie – electronic organizers, upload F/S and personal data from client,

Hypo (cont)

Gross income -- \$950,000

Expenses

- Auto lease- \$1,000
- Staff wages - \$50,000
- Shareholder salary-- \$50,000
- Outside services -- \$220,000 (a substantial increase from prior year)
- Payroll taxes-- \$15,000
- Payroll taxes accrued -- \$40,000 (new item)
- Legal fees -- \$25,000 (new item)
- T&E -- \$22,500
- Cable -- \$2,400
- Landscaping -- \$6,000
- Utilities -- \$4,800
- Supplies -- \$12,000
- Insurance -- \$25,000

Hypo (cont)

Can you accept the bookkeeper's financial information without verification?



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Hypo (cont)

Client Organizer Responses:

- Foreign bank account – “no”
- Alimony - \$120,000
- W-2 from S-corp, prepared by bookkeeper, reflects the \$50,000 salary, \$1,500 in social security tax, \$5,000 in federal income tax withheld, and \$750 in Medicare tax

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Hypo (cont)

Can you accept H's completed organizer
without verification?

Any issues on the W-2?

What if:



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Hypo (cont)

H characterizes expenses for
bookkeeper;

P/R accrual = salary withholding
unpaid;

Canadian bank account:

- One time \$250,000 for downpayment
- Small mortgage
- < \$5,000 “most of the time”

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Hypo (cont)

Contentious dispute with his ex-wife about their property division; court ordered additional \$220,000 from H to Ex to equalize their asset allocations

Legal fee – “mostly” dispute with Ex; “maybe” some for separate property agreement

Box seats for 3 Professional Teams – entertains potential referral sources

Hypo (Cont)

Now what?

What duties do you owe and to whom?



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Hypo (cont)

You prevail on H “to do the right thing” on this year’s return resulting in a large tax liability on the joint return when the S-corp net distributable income passes through to the 1040. H tells you he cannot pay it all at once.

What advice do you give him on April 15th?

What advice do you give on October 15th when he still cannot full pay?

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Hypo (cont)

There's more!

Year before last- H left HMO and started his own practice.

Expended substantial sums on building out the wing of his house that now serves as his office

Prior to build-out, H spent time and money exploring other locations for his practice, losing \$50,000 by failing to exercise an option to purchase a property on which to build his office

You treated as many of these expenses as possible as currently deductible on the S-corp return for that year

You also deducted the cost of forming the S-corp.

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Hypo (cont)

Audit Notice for S-corp March 15 tax return

IDR requests:

- Supporting documentation for the legal fees, the auto lease, the outside services, the T&E, landscaping and insurance;
- Copies of the prior year return for the corp;
- The current and prior year returns for H&W;
- Copies of the forms 940 and 941 for each year

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Hypo (cont)

H discloses:

- Landscaping and insurance amounts are 100% of actual, not a percentage attributed to his home office
- When he finally asked W to sign the separate property agreement, she got really angry and has left him and is back living with her parents
- He's "pretty sure" they'll be able to work things out; but it has been an additional distraction for him.

Hypo (cont)

Who can/should you represent in the audit?

Will you/should you prepare H&W's joint return?



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Hypo (cont)

Bonus Question:

W hires her own preparer who asks you for prior year's tax returns and current year's documentation in order to determine W's filing obligation and prepare the return.

Can you give W's preparer the organizer and other information, including H's disclosures?

Complaints or Inquiries?

Office of Professional Responsibility

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For more info on OPR, Circular 230 and
Disciplined Practitioners visit:

www.irs.gov/irs/article/0,,id=175512,00.html